IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
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ANTHONY & PHYLLIS COTTON	§	
Debtors.	§	CASE NO. 401-41614-DML-13
	§	

MEMORANDUM OPINION AND ORDER REGARDING COMPENSATION

Before the Court is the Application for Approval of Chapter 13 Attorney Fees (the "Application") filed by Ebert Law Offices, P.C. (the "Firm") on October 10, 2001. The Application was heard by the Court on December 17. The Court at that time took the matter under advisement, inviting the Firm to provide supplementary information regarding the Debtors' plan. The Firm provided a letter describing Debtors' plan to the Court on December 21, 2001, with which it enclosed prior correspondence to the Judges of this Court and the Chapter 13 Standing Trustees concerning the inadequacy of the "standard" fee (currently $1,750) allowed in chapter 13 cases.[1] While this Court understands the concern of the Firm and other members of the consumer bar regarding the amount of the "standard" fee, this Memorandum Opinion is not the appropriate context for discussion of that subject.

[1]The standard fee set pursuant to general order is paid to counsel without the necessity of a fee application. This Court, by a Memorandum Order entered on December 3, 2001, established procedures for seeking additional fees in a chapter 13 case. Though the Application was filed in lieu of accepting the "standard" fee, the Court anticipates all applications for compensation of counsel for chapter 13 debtors will conform to that Memorandum Order and other applicable guidelines. Here the Application does not conform fully to the Memorandum Order or the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330, but the Court has determined that the Application contains sufficient information to consider it without requiring any further filing.

This Court has an independent duty to review applications for compensation. *See* 3 COLLIER ON BANKRUPTCY ¶ 330.04[4][c] (15th ed rev. 2001); *see also In re Evangeline Refining Co.*, 890 F2d 1312, 1325-26 (5th Cir. 1989). Because the Application and other requests for compensation by the Firm are at the highest end of the spectrum of charges for representation of chapter 13 debtors, the Court has spent considerable time in studying the Application, including the detailed time entries on its Exhibit A. In addition, the Court has reviewed the entire file for this chapter 13 case and has evaluated this chapter 13 case in terms of other chapter 13 cases it has had before it, considering the requirements imposed on counsel, the quality of the work product and the charges therefore. This Memorandum Opinion constitutes the Court's findings of fact and conclusions of law.[2] *See* FED. R. BANKR. P. 7052 and FED. R. BANKR. P. 9014.

Though the Court concludes that the Firm's charges for work common to every chapter 13 case (preparation of schedules, statement of affairs, preliminary plan, etc.) exceed amounts billed by other counsel, the Court will not adjust the fees sought in the Application on that basis. Instead the Court will analyze the Application pursuant to 11 U.S.C. §330. According to the Application, the Firm consists of four attorneys: David B. Ebert ("DBE"), billed at $175 per hour, Carey D. Ebert ("CDE"), billed at $225 per hour, E. Bruce Ebert ("EBE"), billed at $250 per hour and Stephanie Marshall, who billed no time in this case. The Firm also employs two paralegals who bill at $60 per hour. The Firm specializes in bankruptcy law and is particularly active and knowledgeable in consumer bankruptcy cases.

[2]The Court has assumed the Application covers all fees the Firm will seek in this case for all services, including those performed in the future. Should the Firm request further compensation, the Court reserves the right to reconsider the award of compensation and expenses made herein.

Based on time spent, the Firm calculated its fees (the "lodestar" amount) at $6,786.00. However, the Firm proposed in the Application to reduce that amount to $5,300.00. The Firm also seeks reimbursement of expenses in the amount of $285.10.[3] The Debtors paid $900 to the Firm prior to filing. Thus, the Firm asks that at this time the Court award it a total of $4,685.10 to be paid by the chapter 13 trustee through the Debtors' plan.

In the Application, the Firm cites as its accomplishments for its clients (1) stopping harassment by creditors; (2) assisting the Debtors in creating a viable budget; (3) saving the Debtors' business; and (4) enjoining the pursuit of the Debtors by the IRS and substantially reducing the claim of the IRS. While many of these accomplishments are the automatic result of a chapter 13 filing (e.g., staying the IRS and creditor harassment) or confirmation of a chapter 13 plan (e.g., establishing a viable budget and preserving Debtors' business), the Court has not questioned any time entry clearly related to these tasks.[4]

From the perspective of creditors of the Debtors, this case has not been an astounding success. The preliminary plan proposed by Debtors provided no return to unsecured creditors. After review by the Standing Chapter 13 Trustee, this was somewhat improved, allowing for a 2% return to unsecured creditors. The plan did, however, preserve Debtors' homestead and provide for retention by them of various items subject to liens and used in Debtors' business.

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[3]Though the Court has some concern with the Firm's mileage and copying charges, it will allow the expenses applied for.

[4]The Court, indeed, has accepted as accurate most time entries, even those such as .2 hour each for DBE (April 25, 2001) and CDE (May 1, 2001) for "review[ing] 341 notice." These and other entries (especially when made by two attorneys and regarding a standard form) are, however, troublesome to the Court.

Given the minute return to unsecured creditors, it is appropriate to begin analysis of the allowability of the fees sought with the time spent by attorneys at the Firm reviewing claims[5] (the Court reviewed all claims itself, expending approximately 30 minutes in doing so). Exhibit "A" to the Application reflects .2 hour spent by EBE reviewing one claim. DBE spent 2.6 hours reviewing 13 claims. CDE spent 3.4 hours reviewing claims (2.6 hours on 13 individual claims and .8 hour in connection with the final plan). Most of the claims were unsecured, and those that were secured were not attacked. Often the same one-page unsecured claim was reviewed by two attorneys. Whether the claim consisted of a one-page form or included attached exhibits, .2 hour was the time invariably spent by each attorney in its review.

The total fees sought for review of claims is $1,300.00 . Most of the time spent reviewing claims was before the 2% return to unsecured creditors was incorporated in the plan. The Court finds that $1,300.00 and the time spent reviewing claims was neither reasonable nor beneficial to the Debtors or the estate. The Court recognizes that a claims review is necessary, and will therefore allow the .8 hour spent on September 24, 2001 by CBE in connection with the final plan.[6] Thus, of the $1,300 sought in connection with claims, the Court will allow $202.50 and disallow the balance. *See* 11 U.S.C. §330(a)(3)(A) and (a)(4)(B).

Exhibit A to the Application reflects billings at the time of Debtors' chapter 13 filing of .6 hour by EBE, .4 hour by CBE, .4 hour by DBE and 2.7 hours by paralegals in preparation, review and filing of an "emergency" chapter 13 petition. The petition in the Court's records is the standard form and required no

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[5]The Court's analysis excludes review of the IRS claim. Time spent on that claim is accepted by the Court as necessary and appropriate.

[6]Interestingly, despite the time expended reviewing claims, several of those claims were objected to by Debtors on the form for objections as not even having been filed (e.g., Capital One).

more than completion of a dozen blanks (such as the Firm's name and address) and making a few check marks. Any required information not readily ascertainable by the Firm would have been easily provided by the Debtors. Thus the Court finds that the fees sought in connection with the "emergency petition" ($472.00) should be reduced to $170.00[7] and the balance of $302.00 disallowed. *See* 11 U.S.C. §330(a)(3)(D).

On April 10, 2001 both CDE and DBE reviewed the file worksheet and preliminary plan, each spending 1.3 hours on the task (the time entries do not reflect that the review was "in conference;" the Court has not in this case reduced fees sought for intra-office conferences). The Court finds this duplication of effort, for which a total of $510.00 is sought, unnecessary. Accordingly, the Court will allow $200 and disallow the remaining $310.00. *See* 11 U.S.C. §330(a)(4)(A)(i).

The Debtors' initial §341 meeting, for which CDE charged 1.5 hours, was continued. At the continued §341 meeting DBE billed 3.5 hours. Obviously some this time was "waiting" time.[8] While the Court recognizes counsel is entitled to some compensation for time spent waiting for a case to be called, the Court finds the amount here sought ($950.00) excessive. The firm will be allowed $600.00 for attendance at the §341 meetings, and $350 will be disallowed. *See* 11 U.S.C. §330(a)(3)(D).

Exhibit "A" to the Application reflects .2 hour spent on March 26, 2001 by each of DBE and CDE reviewing a notice of appearance. The notice is contained in the Court's records and is four typewritten lines. Similarly, on both April 13 and April 19 DBE billed .3 hour for review of a filed notice of bankruptcy

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[7]The creditor matrix appended to the petition was inaccurate, listing only a few of the creditors.

[8]Court records reflect the Firm had two other §341 meetings scheduled on the first date but no other meeting on August 31, the date of the continued meeting.

in "Justice Court, 1st percent [sic]." The total sought for these activities was $185. The Court will allow $45.00 and disallow the balance. *See* 11 U.S.C. §330(a)(4)(A)(i).

Exhibit "A" to the Application also reflects considerable paralegal time spent coaxing the Debtors into providing information or dissuading the Standing Chapter 13 Trustee from seeking dismissal of the case. The Court estimates these entries exceed $200.00 of the fees sought.

The Court would note that the Firm routinely billed .2 attorney hours and .4 paralegal hours for letters of transmission. There are also paralegal and attorney entries on April 17, 2001 concerning an "[a]mended Notice of Hearing on Debtor's [sic] Modification of Plan after Confirmation." At that date the final plan had not been drafted and confirmation had not occurred. Similarly, on March 7, .4 hour of DBE and a paralegal's time are charged for a letter "re file marked copy of plan, petition, statement and schedules." The preliminary plan, statement of affairs and schedules however, were not filed until April 12. On August 6, 2001, CDE charged .2 hour for a service described only as "2000." These entries cast doubt on the Firm's accuracy in billing. Finally, the Court, as noted, has carefully reviewed the file in the case. Untypically, there are few pleadings (other than forms) filed on behalf of Debtors. In fact, only a motion to extend time for filing schedules appears to have been specially prepared – and that motion refers in its prayer to the wrong debtors. For these reasons, the Court concludes the fees should be reduced by another $500.00.[9] *See* 11 U.S.C. §330(a)(3).

This results in a total reduction of the Firm's lodestar amount of $2,700.00. As the lodestar was

[9]The Court sees no evidence in the file or Application that this was a particularly difficult case. Indeed, the Court considers that the "fair value" to the Debtors and the estate of the Firm's services falls within the "standard" fee of $1,750. However, the Court is reluctant to be unduly heavy-handed at this time in reducing fees sought by application.

$6,786.00[10], the Firm is entitled to $4,086.00 in fees and $285.10 in expenses. Having received $900.00 as a retainer, there remains $3,471.10 due. However, the Court holds that $200 of charges should be borne by Debtors. Therefore, it is

ORDERED that Ebert Law Offices P.C.. be awarded, in addition to amounts previously paid, fees of $3,186.00 and expenses of $285.10, for a total of $3,471.10; and it is further

ORDERED that the Standing Chapter 13 Trustee pay to such firm $3,271.10 in installments, such installments calculated consistently with and in addition to the amounts (1) payable pursuant to their plan to the trustee by Debtors and (2) the regular expenses of the Debtors; and it is further

ORDERED that the Debtors pay such firm $200.00 on such terms as will not interfere with their performance of their plan; and it is further

ORDERED that the Standing Chapter 13 Trustee review Debtors' plan to determine whether it should be amended to account for this decision.

Signed the 31st day of January, 2002.

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DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE

[10]The Court will not include the Firm's voluntary reduction under the circumstances.